

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DURAVEST, INC.,

Plaintiff,

- against -

VISCARDI, AG, WOLLMUTH MAHER &
DEUTSCH, LLP, MASON H. DRAKE, ESQ., BRUCE
O'DONNELL, CPA, BRUCE O' DONNELL
CPA/PFS, P.A., BIOMEDICAL CONSULTANT SL,
RICHARD MARKOLL, and ERNESTINE BINDER
MARKOLL,

Defendants.

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Electronically Submitted

NOTICE OF MOTION

07 Civ. 10590 (JSR)

PLEASE TAKE NOTICE that upon the accompanying Declaration of Stephen Jacobs and Memorandum of Law, defendants Bruce O'Donnell, CPA and Bruce O'Donnell CPA/PFS, P.A. (together "O'Donnell"), shall move this Court, before the Honorable Jed S. Rakoff, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, on March 17, 2008 at 4:00 p.m., to dismiss (1) the claim of plaintiff Duravest, Inc. under the Racketeer Influenced and Corrupt Organizations Act pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure ("FRCP"); (2) the three state law claims against O'Donnell for lack of subject matter jurisdiction, pursuant to FRCP 12(b)(1) and 28 U.S.C. § 1367; and (3) in the alternative, plaintiff's fraud and breach of contract claims for failure to state a claim, pursuant to FRCP 12(b)(6) and 9(b).

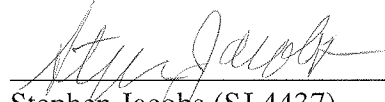
PLEASE TAKE FURTHER NOTICE that pursuant to the Court's directive, answering papers, if any, shall be served no later than March 3, 2008, and reply papers, if any, shall be served by no later than March 10, 2008.

Dated: New York, New York
February 11, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By:


Stephen Jacobs (SJ 4437)
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